

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 ERNESTO CHAVEZ,  
12 CDCR #P-06885,

13 Plaintiff,

14 vs.

15 JASON HANSSON, M.D.;  
16 LEO SALDIVAR, Ph.D;  
17 CRAIG KAISER, M.D.,

18 Defendants.

19 Civil No. 07-1405 LAB (CAB)

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28 **ORDER REGARDING  
PLAINTIFF'S LETTER  
[Doc. No. 9]**

Plaintiff, a state prisoner currently incarcerated at Richard J. Donovan Correctional Facility (“RJDCF”) in San Diego, and proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. In his Complaint, Plaintiff alleges two RJDCF staff psychiatrists (Defendants Hansson and Kaiser) and a staff psychologist (Defendant Saldivar) have acted with deliberate indifference to his serious mental health needs in violation of his Eighth Amendment. (See Compl. at 3.) Plaintiff seeks no damages, only injunctive relief preventing Defendants from removing him from the “Enhanced Outpatient Program” (“EOP”) and requiring “adequate and proper psych[iatric] treatment,” including “the correct medications.” (*Id.* at 7.)

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1       On November 1, 2007, the Court granted Plaintiff leave to proceed *in forma pauperis*  
 2 pursuant to 28 U.S.C. § 1915(a), and directed the U.S. Marshal to effect service of the summons  
 3 and Complaint upon the Defendants pursuant to Fed.R.Civ.P. 4(c)(2) and 28 U.S.C. § 1915(d)  
 4 [Doc. No. 3]. Since then, the U.S. Marshal has been unable to execute service as to Defendants  
 5 Hanssson and Saldivar [Doc. Nos. 5-6].<sup>1</sup> The U.S. Marshal has successfully executed service  
 6 upon Defendant Kaiser, however, and on January 14, 2008, Defendant Kaiser filed a waiver of  
 7 personal service pursuant to FED.R.CIV.P. 4(d) [Doc. No. 6].

8       On January 18, 2008, Plaintiff submitted a letter addressed to the Clerk of Court, which  
 9 the Court accepted for filing despite its failure to comply with S.D. CAL. CIVLR 77.2 [Doc. Nos.  
 10 8, 9]. In this letter, Plaintiff both advises the Court of the U.S. Marshal's service upon defendant  
 11 Kaiser, but also asserts that "on or about January 11, 2008, [he] was threatened by [his] current  
 12 primary care psychologist with removal" from the EOP, in which he has "been a participant for  
 13 well over nine (9) years." *See Letter at 1.* Plaintiff acknowledges that his "continued [EOP]  
 14 treatment is "the heart of his civil rights complaint and injunctive relief which [he] is  
 15 requesting."

16       To the extent Plaintiff's letter may be liberally construed to be a request for preliminary  
 17 injunctive relief under FED.R.CIV.P. 65, however, Plaintiff must demonstrate "(1) a strong  
 18 likelihood of success on the merits, (2) the possibility of irreparable injury ... if preliminary relief  
 19 is not granted, (3) a balance of hardships favoring [him], and (4) advancement of the public  
 20 interest (in certain cases)." *Beardslee v. Woodford*, 395 F.3d 1064, 1067 (9th Cir. 2005) (citing  
 21 *Johnson v. Cal. State Bd. of Accountancy*, 72 F.3d 1427, 1430 (9th Cir. 1995)) (internal  
 22 quotation marks and citation omitted). Alternatively, injunctive relief could be granted if

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 24       <sup>1</sup> The Court notes that the U.S. Marshal Service returned Plaintiff's attempts to serve defendants  
 25 Hansson and Saldivar unexecuted on January 2, 2008, noting that the Litigation Coordinator at RJDCF  
 26 informed them that neither of these parties is employed at RJDCF. See Doc. Nos. 5-6. Plaintiff is  
 27 hereby advised that unless he corrects this deficiency in service, both defendants Hansson and Saldivar  
 28 will be subject to dismissal pursuant to FED.R.CIV.P. 4(m). *See Walker v. Sumner*, 14 F.3d 1415,  
 1421-22 (9th Cir. 1994) (where a pro se plaintiff fails to provide the Marshal with sufficient information  
 to effect service of the summons and complaint within 120 days, sua sponte dismissal of the unserved  
 defendants is appropriate); *see also Rochon v. Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987) (noting that  
 plaintiff "may not remain silent and do nothing to effectuate such service"; rather, "[a]t a minimum, a  
 plaintiff should request service upon the appropriate defendant and attempt to remedy any apparent  
 defects of which [he] has knowledge").

1 Plaintiff “demonstrates ‘either a combination of probable success on the merits and the  
 2 possibility of irreparable injury or that serious questions are raised and the balance of hardships  
 3 tips sharply in his favor.’” *Id.* (citation omitted). “These two alternatives represent ‘extremes  
 4 of a single continuum,’ rather than two separate tests.” *Clear Channel Outdoor Inc. v. City of  
 5 Los Angeles*, 340 F.3d 810, 813 (9th Cir. 2003) (citation omitted).

6 Here, Plaintiff’s letter, by itself, is simply not sufficient to show either a strong likelihood  
 7 of success on the merits or the irreparable injury required to justify immediate injunctive relief.  
 8 *Beardslee*, 395 F.3d at 1067. While the Court has found Plaintiff’s Complaint sufficient to  
 9 survive the initial screening required by 28 U.S.C. § 1915(e)(2) and § 1915A, this case is in the  
 10 preliminary pleading stages. Thus, there is yet no evidence from which the Court may determine  
 11 the likelihood that Plaintiff will actually prevail on the merits of his Eighth Amendment claims.

12 In addition, Plaintiff’s letter states that his “case manager, Dr. Bahro, Ph.D, stat[ed] [his]  
 13 removal is imminent, even though there are records which state [he is ] mentally ill.” (See Pl.’s  
 14 Letter at 1.) To the extent Plaintiff seeks injunctive relief preventing Dr. Bahro from removing  
 15 him from the EOP however, the Court has no jurisdiction. A federal district court may issue an  
 16 injunction only if it has personal jurisdiction over the parties and subject matter jurisdiction over  
 17 the lawsuit. The court may not attempt to determine the rights of persons not before the court.  
 18 See, e.g., *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229, 234-35 (1916); *Zepeda v. INS*,  
 19 753 F.2d 719, 727-28 (9th Cir. 1983). Under Federal Rule of Civil Procedure 65(d), an  
 20 injunction binds only “the parties to the action, their officers, agents, servants, employees, and  
 21 attorneys, and ... those persons in active concert or participation with them who receive actual  
 22 notice of the order ....” The district court must, therefore, tailor the injunction to affect only  
 23 those persons over which it has power. See *Gardner v. Westinghouse Broadcasting Co.*, 437  
 24 U.S. 478, 481 (1978). A district court lacks authority to issue an injunction directed at an entity  
 25 that is not a party before it. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 112  
 26 (1969).

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1       As noted above, Plaintiff's Complaint names only three RJDCF officials as defendants:  
2 Jason Hansson, M.D., Leo Saldivar, Ph.D, and Craig Kaiser, M.D. Dr. Bahro , who is mentioned  
3 in Plaintiff's letter, is not named in his Complaint and therefore, is not a party to this action. The  
4 only party over whom this Court currently has personal jurisdiction is Dr. Kaiser; however,  
5 Plaintiff's letter does not seek injunctive relief as to him. Therefore, this Court lacks the power  
6 to grant the injunctive relief Plaintiff appears to seek. *See Zepeda*, 753 F.2d at 727-28.

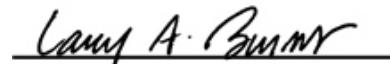
7       **Conclusion and Order**

8       For all these reasons, the Court hereby finds that to the extent Plaintiff's letter seeks  
9 preliminary injunctive relief, it must be denied without prejudice at this time.

10      IT IS SO ORDERED.

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12 DATED: January 31, 2008

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14       **HONORABLE LARRY ALAN BURNS**  
15       United States District Judge

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